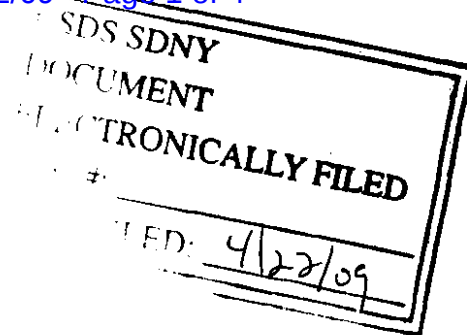


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



KENYATTA MURPHY,

Petitioner,

-v-

DALE ARTUS, Superintendent, Clinton  
Correctional Facility,

Respondent.

No. 07 Civ. 9468 (RJS) (AJP)  
ORDER

RICHARD J. SULLIVAN, District Judge:

Before the Court is the Report and Recommendation of the Honorable Andrew J. Peck, Magistrate Judge, in connection with the above captioned Petition for a writ of habeas corpus. For the reasons set forth below, the Court adopts the Report and Recommendation in its entirety.

Petitioner commenced this action on a *pro se* basis on October 24, 2007, seeking a writ of habeas corpus relating to his March 5, 2004 conviction in the New York State Supreme Court, Bronx County, for three counts of first degree robbery. (Doc. No. 1) Petitioner pleaded guilty to these offenses and was sentenced to concurrent sentences of ten years imprisonment. In this matter, Petitioner simply attached to his Petition the brief from his direct appeal in New York State, in which he argued that: (1) his sentence was "unduly harsh and should be reduced in the interest of justice"; and (2) he should have been granted youthful offender status.

On November 9, 2007, the undersigned directed Respondent to respond to the Petition within sixty days. (Doc. No. 2.) However, on January 8, 2008, the Court granted Petitioner's request to hold this matter in abeyance in order to permit him to file a motion challenging the sufficiency of his guilty plea pursuant to New York Criminal Procedure Law ("C.P.L.") § 440. (Doc. No. 4.) So

far as the Court is aware, Petitioner failed to file such a motion.

On January 15, 2009, the Court referred the instant Petition to Judge Peck. (Doc. No. 6.) One day later, on January 16, 2009, Judge Peck directed the parties to advise him of the status of Petitioner's contemplated C.P.L. § 440 motion. (Doc. No. 8.) In response to the Order, Petitioner's "inmate assistant" submitted an undated affidavit representing that the motion had not been filed as a result of issues relating to the conditions of Petitioner's confinement. (*See* Doc. No. 9.)

On January 30, 2009, Judge Peck ruled that, although there was no time bar to filing a C.P.L. § 440 motion, Petitioner could no longer raise a timely challenge to his guilty plea under the Antiterrorism & Effective Death Penalty Act ("AEDPA"). (*Id.*) Judge Peck also denied Petitioner's request for appointment of counsel. (*Id.*) Petitioner filed no objections to these rulings.

On April 1, 2009, Judge Peck issued a Report and Recommendation concluding that Petitioner's application for a writ of habeas corpus should be denied. (Doc. No. 12.) With respect to Petitioner's argument that his sentence was "unduly harsh," Judge Peck found that, because it is undisputed that Petitioner was sentenced within the range prescribed by New York State law for the offenses underlying his conviction, his first argument did not present a federal constitutional issue. (Doc. No. 12 at 15.) Judge Peck likewise concluded that denial of youthful offender status does not provide a basis for issuing a writ of habeas corpus. (*Id.* at 16.) Based on those findings, Judge Peck recommended that the Court deny the Petition and not issue a certificate of appealability. Petitioner failed to file timely objections to any portion of Judge Peck's Report and Recommendation.


In reviewing a Report and Recommendation, the Court may "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely

objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.’” *Cuadrado v. New York City Dep’t of Correction*, No. 08 Civ. 3026 (PAC) (THK), 2009 WL 1033268, at \*1 (S.D.N.Y. Apr. 16, 2009) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y.2003)); *see also Williams v. Senkowski*, No. 97 Civ. 3887 (DLC), 1999 WL 1192296, at \*1 (S.D.N.Y. Dec. 13, 1999).

After a careful review of the record and Magistrate Judge Peck’s well-reasoned Report and Recommendation, the Court finds no clear error and adopts the Report in its entirety. For the reasons set forth therein, Petitioner’s application for a writ of habeas corpus is DENIED. In addition, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253; *Love v. McCray*, 43 F.3d 192, 195 (2d Cir. 2005). The Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: April 22, 2009  
New York, New York



RICHARD A. SULLIVAN  
UNITED STATES DISTRICT JUDGE

A copy of this Order has been mailed to:

Kenyatta Murphy  
04-A-1392  
Clinton Correctional Facility  
P.O. Box 2001  
Dannemora, NY 12929

Rither Alabre  
Bronx District Attorney Office  
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Bronx, New York 10451